

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BYRAN CARMODY,

Plaintiff,

- against -

GOTHAMIST LLC

Defendant.

Docket No. 1:17-cv-7210

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Bryan Carmody (“Carmody” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Gothamist LLC (“Gothamist” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a screen shot of a copyrighted video of a teen driver in San Francisco who was killed by a motorist owned and registered by Carmody, a San Francisco based photographer and videographer. Accordingly, Carmody seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Carmody is a professional photojournalist and videographer in the business of licensing his photographs and videos to online and print media for a fee having a usual place of business at 459 Fulton Street, Suite 201, San Francisco, California 94102.

6. Upon information and belief, Gothamist is a limited liability company duly organized and existing under the laws of the State of New York, with a place of business at 810 7th Avenue, Suite 800, New York, New York 10019. At all times material hereto, Gothamist has owned and operated a website at the URL: www.SFist.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Video

7. Carmody videotaped the crime scene of a teen driver who was killed by a motorist in San Francisco (the “Video”).

8. Carmody is the author of the Video and has at all times been the sole owner of all right, title and interest in and to the Video, including the copyright thereto.

9. The Video has a pending United States Copyright Office application number of 1-5616169971.

B. Defendant’s Infringing Activities

10. On May 2, 2017 Gothamist ran an article on the Website entitled *More Details Released in Fatal Shooting of 15-Year-Old Sunset Boulevard Driver*. See http://sfist.com/2017/05/02/more_details_released_in_fatal_shoo.php.

11. The article prominently featured a screen shot of the Video. A true and correct copy of the article with the Video is attached hereto as Exhibit A.

12. Gothamist did not license the Video from Plaintiff for its article, nor did Gothamist have Plaintiff's permission or consent to publish a screen shot of the Video on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST GOTHAMIST)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Gothamist infringed Plaintiff's copyright in the Video by reproducing and publicly displaying a screen shot of the Video on the Website. Gothamist is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Video.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Gothamist have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Video, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Gothamist be adjudged to have infringed upon Plaintiff's copyrights in the Video in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Video; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
September 21, 2017

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